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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,964	01/08/2002	Mary A. Lamp	72848	1943

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FITCH EVEN TABIN AND FLANNERY
120 SOUTH LA SALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/042,964	Applicant(s) LAMP ET AL.
	Examiner Lien T Tran	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12 is/are allowed.
- 6) ☒ Claim(s) 13-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 13: Line 18 is indefinite. The pizza crust is not contain in a kit; thus, what does applicant mean " wherein the kit does not contain an anti-fogging agent". How does this limitation relate to the rest of the claim?

In claim 14, what does applicant mean by a base layer having a first dimension and second dimension? How can one layer has two dimensions? Also, if the dimensions are the same, the how can there be two dimensions. It is not clear what applicant is claiming. The same problem is noted with respect to the top rim.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plemons et al in view of the cookbook " The Good Cook Snack & Sandwiches", The

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book " Encyclopedia of Chemical Technology", the book "Baking Science & Technology" and Atwell..

Plemons et al disclose pizza crusts intended for storage at ambient or refrigerated temperature. The crusts have a water activity between .92 and .94 and are stored for as long as 20 weeks. The crusts are made from pizza dough comprising flour, water, vegetable oil, sodium bicarbonate, sodium aluminum phosphate, yeast and flavoring agents such as salt. The crusts are packaged in stack in packages that are resistant to the transmission of air and water vapors. (see columns 2-3 and 6)

Plemons et al do not disclose pizza crusts which have slanted side walls, base layer and top rim and the dimensions as claimed. The dough recipe does not contain ingredients such as sweetener, dough relaxer, butter, monoglycerides and diglycerides, dried egg white, sodium stearoyl lactylate, calcium propionate, alpha amylase, guar gum and spices and seasonings. Plemons et al do not disclose the amounts as claimed.

The cookbook discloses tart shells having slanted side walls, base layer and top rim. The shell forms a receptacle to contain filling.

Atwell discloses a refrigerated dough in which common dough ingredients such as sugar, emulsifier, flavorant, a dough relaxer are added. Emulsifiers are added to influence texture and homogeneity, increase dough stability, to improve eating quality and to prolong palatability. Emulsifiers used can be mono or di-glycerides. Dough relaxer may be added to facilitate sheeting of the dough. (see columns 4-5)

The book " Encyclopedia of Chemical Technology" teaches to add sugar to modify flavor, egg to impart crispy crust, enzyme to enhance the properties of the dough. It also teaches to add mold inhibitors such as calcium propionate to bakery foods to extend shelf life and to add butter to dough product for flavor contribution.

The book " Baking Science & Technology teaches to use dough conditioners such as sodium stearoyl lactylate in dough. The condition acts to produce measurable increase in dough absorption, an improved mixing tolerance and machinability of the dough, an accelerated final proof, an increase in loaf volume, improvements in grain and texture, greater crust tenderness and extended keeping properties.

All the ingredients claimed are well known additives for dough products as taught by the prior art. It would have been obvious to one skilled in the art to add sweetener, dough relaxer, butter, monoglycerides and diglycerides, dried egg white, sodium stearoyl lactylate, calcium propionate, alpha amylase, spices and seasonings to the Plemons et al dough for the reason taught in the prior art. The addition of gum as a stabilizer would also have been obvious because it is well known in the art that gum functions as a stabilizer in dough. As to the amounts, it is within the skill of one in the art to determine the amounts because the process of making pizza crusts is well known in the art. One can readily determine the appropriate amounts through routine experimentation. As to making the crust to have slanted side walls, base layer and top rim, it would have been an obvious matter of choice to make the crust in any shape and size desired. Crusts having slanted side walls are known in the art as shown by the cookbook; tart shells serve the same function as pizza shells because toppings are

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placed on the shells. Thus, it would have been obvious to make pizza crust having the shape of the tart shells for ease of placing topping as the cookbook shows the topping fits nicely into the cavity of the shells. The cavity will hold the topping better than a flat shell. If the shells have slanted side walls as shown in the cookbook, they will allow nesting of the crusts and this is beneficial to the Plemons et al products because they are packaged in stack.

Claims 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cochran et al. in view of the cookbook "The Good Cook Snack & Sandwiches", The book "Encyclopedia of Chemical Technology", and Atwell.

Cochran et al disclose ready-to-eat pizza kit. The kit comprises an outer package and pizza components within the individual compartments of the outer package. The kit includes fully baked pizza crust, pizza sauce, cheese, pizza toppings etc.. The package is sealed to hermetically separate all components of the kit from the external atmosphere and the top is further sealed to the base of the package to hermetically separate the different compartments in the package. The package is sealed in preferably gas flushed. Individual components could be gas flushed or vacuum sealed and placed in a tray in forming the kit. The kit does not contain anti-fogging agent. The pizza crust is made from a dough comprising flour, water, vegetable oil, shortening, salt, sugar, yeast. The crust retains satisfactory texture and chewability during storage. (see columns 2,4,5-6)

Cochran et al do not disclose pizza crust in which dough relaxer, enzyme and mono and di-glycerides are added. They also do not disclose crust having the shape as in claim 19 and the kit does not include a beverage.

The cookbook discloses tart shells having slanted side walls, base layer and top rim. The shell forms a cavity to contain filling.

Atwell discloses a refrigerated dough in which common dough ingredients such as sugar, emulsifier, flavorant, a dough relaxer are added. Emulsifiers are added to influence texture and homogeneity, increase dough stability, to improve eating quality and to prolong palatability. Emulsifiers used can be mono or di-glycerides. Dough relaxer may be added to facilitate sheeting of the dough. (see columns 4-5)

The book " Encyclopedia of Chemical Technology" teaches to add enzyme to enhance the properties of the dough and to add butter to dough product for flavor contribution.

All the ingredients claimed are well known additives for dough products as taught by the prior art. It would have been obvious to one skilled in the art to add dough relaxer, butter, monoglycerides and diglycerides, Cochran et al dough for the reason taught in the prior art. As to the amounts, it is within the skill of one in the art to determine the amounts because the process of making pizza crusts is well known. One can readily determine the appropriate amounts through routine experimentation. As to making the crust to have slanted side walls, base layer and top rim, it would have been an obvious matter of choice to make the crust in any shape and size desired. Crusts having slanted side walls are known in the art as shown by the cookbook; tart shells

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serve the same function as pizza shells because toppings are placed on the shells.

Thus, it would have been obvious to make pizza crust having the shape of the tart shells for ease of placing topping as the cookbook shows the topping fits nicely into the cavity of the shells. The cavity will hold the topping better than a flat shell. It would also have been obvious to include a beverage to make a complete meal; Cochran et al disclose other components can be included.

Claims 1-12 are free of prior art because there is no disclosure of a pizza kit containing a pizza crust having the water activity as claimed and that such kit does not contain an anti-fogging agent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

September 25, 2003


LIEN TRAN
PRIMARY EXAMINER
Group 1700